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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,307	09/16/2003	Dale A. Frantz	16524	1353
50659	7590	01/11/2006		
BUTZEL LONG DOCKETING DEPARTMENT 100 BLOOMFIELD HILLS PARKWAY SUITE 200 BLOOMFIELD HILLS, MI 48304			EXAMINER LHYMN, EUGENE	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 01/11/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/663,307

Applicant(s)

FRANTZ, DALE A.

Examiner

Eugene Lhymn

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/12/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5, 9, 11, 13, 14, 15, 18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Zurawin et al. (US 4164803). With respect to claim 1, Zurawin et al. discloses the following:

- A container body having a plurality of walls
- A handle extending from the container body (Fig 1, item 20)
- A divider disposed in the cavity
- Means for removably retaining the divider in the cavity

With respect to claim 5, Zurawin et al. discloses a front, rear, and pair of sidewalls.

With respect to claim 9, Zurawin et al. discloses the handle including a grip portion and an attaching portion, wherein the grip portion is the vertical component of item 20 and the attaching portion is the substantially arcuate portion above the grip portion.

With respect to claim 11, Zurawin et al. discloses the handle including a hang tab portion (Fig. 1, item 21).

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With respect to claim 13, Zurawin et al. discloses means for removably retaining the divider (Fig. 1, items 24 & 26).

With respect to claim 14, Zurawin et al. discloses the base of the container and the handle extending in the same plane (Fig. 1).

With respect to claims 15 & 18, Zurawin et al. discloses the following:

- A container body
- A handle
- A divider

With respect to claim 20, Zurawin et al. discloses the base of the container and the handle extending in the same plane (Fig. 1).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, 9-13, and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jarecki et al. (US 5533228) in view of Zurawin et al. (US 4164803) and Leffert et al. (US 3837034). With respect to claim 1, Jarecki et al. discloses a container body having a plurality of walls defining an open cavity, but fails to teach a handle extending from the container body, a divider, and means for retaining the divider.

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Nonetheless, Leffert et al. teaches a paint tray with a handle extending from the container body, which improves maneuverability of the container, and Zurawin et al. teaches a paint tray having a divider with means for retaining it within the container, which provides a more versatile design. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a handle to the container of Jarecki et al. as taught by Leffert et al. and to add a divider and means for retaining the divider to the container of Jarecki et al. as taught by Zurawin et al. so as to improve maneuverability and versatility of the container, respectively.

With respect to claim 2, Jarecki et al., as modified above, discloses the front wall having a horizontal portion 24 and a sloped portion 19.

With respect to claim 3, Jarecki et al., as modified above, discloses the claimed invention except for a rib being formed on the inside surface of the container. However, Leffert et al. teaches a paint tray with ribs formed on the inside surface of the container, which provides support for a painting tool. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add ribs to the inside surface of the container of Jarecki et al. as taught by Leffert et al. so as to provide support for a painting tool.

With respect to claim 4, Jarecki et al. discloses the claimed invention except for at least one horizontally extending rib. Nonetheless, Leffert et al. teaches a paint tray with horizontal ribs formed on the inside surface of the container, which provides support for a painting tool. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add horizontal ribs to the inside surface of

the container of Jarecki et al. as taught by Leffert et al. so as to provide support for a painting tool.

With respect to claim 5, Jarecki et al. discloses a front, rear, and pair of sidewalls.

With respect to claim 6, Jarecki et al. discloses the front, rear, and sidewalls sloping inwardly, as shown in Fig.'s 2 & 3.

With respect to claim 7, Jarecki et al. discloses a lip extending upwardly from an upper edge.

With respect to claim 9, Jarecki et al. discloses the claimed invention except for the container having a handle including a grip portion. However, Leffert et al. teaches a paint tray having a handle with a grip portion (Fig. 1, item 12) which provides a convenient means for carrying the tray. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a handle with a grip portion to the container of Jarecki et al. as taught by Leffert et al. so as to provide a convenient means for carrying the tray.

With respect to claim 10, Leffert et al. teaches the grip portion having a tubular shape.

With respect to claim 11, Leffert et al. teaches the handle including a hang tab, as shown in Fig. 5, wherein the arcuate portions at the end of the handle 12 is the hang tab.

With respect to claim 12, Jarecki et al. discloses the claimed invention except for the container having a divider that tapers. However, Zurawin et al. teaches a paint tray

having a divider, wherein if the tray of Jarecki et al was modified to have a divider as taught by Zurawin et al., the divider would clearly be tapered as the tray of Jarecki is tapered. Having a divider as such improves versatility of the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a divider to the tray of Jarecki et al. as taught by Zurawin et al. so as to improve the versatility of the container.

With respect to claim 13, Zurawin et al. teaches means for removably retaining the divider, Fig. 1, items 24 & 26.

With respect to claim 18, Jarecki et al. discloses a container body, but fails to teach a divider disposed in the cavity and a handle. However, Zurawin et al. teaches a paint tray having a divider, thus improving versatility of the container, and Leffert et al. teaches a paint tray having a handle. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a divider and handle to the tray of Jarecki et al. as taught by Zurawin et al. and Leffert et al. so as to improve versatility of the tray.

With respect to claim 19, Jarecki et al. discloses a nestable tray but fails to teach a tubular grip portion. However, Leffert et al. teaches a tubular grip portion, item 12. Having a grip portion as such provides convenient gripping of the tray. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a handle with a tubular grip portion to the container of Jarecki et al. as taught by Leffert et al. so as to provide convenient gripping of the tray.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jarecki et al. in view of Zurawin et al. and Leffert et al. as applied to claim 1 above, and further in view of Tennant (US D461288 S). Zurawin et al. discloses the claimed invention except for the lip forming an inner upwardly facing step and an outer downwardly facing step. Nonetheless, Tennant teaches a paint tray wherein the lip forms an inner upwardly facing step and an outer downwardly facing step (Fig. 1). Having the lip as such provides a nesting feature. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the lip of Zurawin et al. to have an inner upwardly facing step and an outer downwardly facing step as taught by Tennant so as to provide a nesting feature.

6. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zurawin et al. in view of Jarecki et al. With respect to claim 16, Zurawin et al. discloses the claimed invention except for front wall having a generally horizontal portion. However, Jarecki et al. teaches a paint tray having a generally horizontal portion, thereby providing a surface to upright objects against. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the front wall of Zurawin et al. to have a horizontal portion as taught by Jarecki et al. so as to provide a surface to upright objects against.

With respect to claim 17, Zurawin et al teaches a plurality of generally horizontally extending ribs formed on the front wall.



**Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Ippolito (US 5511279)

Goetz (US Des. 328/808)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**JES F. PASCUA**  
**PRIMARY EXAMINER**